

11 ALI POORSINA,

12 Plaintiff,

13 v.

14 LAW OFFICES OF JEFFERY B. NEUSTADT, et al.,

15 Defendants.

Case No. 21-cv-05488-LB

**ORDER DISMISSING  
COMPLAINT**

Re: ECF Nos. 13 and 23

17 **INTRODUCTION**

18 This case is related to an earlier interpleader case, *In re: 1563 28th Avenue*, No. 19-cv-01385-  
19 LB (N.D. Cal.), where the court distributed funds to creditors — including Jeffrey Neustadt as a  
20 member of Big Bear Lake Developers — from the foreclosure sale of debtor Ali Poorsina’s house  
21 in San Francisco. Mr. Poorsina is representing himself in this case and the earlier case. In the earlier  
22 case, Mr. Poorsina challenged the validity of his signature on the note securing the Neustadt claim,  
23 but the court rejected the challenge and granted Mr. Neustadt summary judgment.<sup>1</sup> In this case, Mr.  
24 Poorsina sued Mr. Neustadt and Anna Mosk (also affiliated with Big Bear) for fraud and a violation  
25 of the California Unfair Competition Law (UCL) based in part on their “conduct filing [their]

26  
27 <sup>1</sup> *In re: 1563 28th Ave.*, No. 19-cv-01385-LB, Orders – ECF Nos. 167 at 6–7, 14 & 183. Citations refer  
28 to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page  
numbers at the top of documents.

1 fraudulent motion for summ[a]ry judgment into the surplus proceeds.”<sup>2</sup> The court can decide the  
 2 motion without oral argument. N.D. Cal. Civ. L. R. 7-1(b). The court dismisses the complaint with  
 3 prejudice: the court lacks jurisdiction, and it decided the issues in the earlier case.

## 5 STATEMENT

6 The earlier orders in the related interpleader case summarize the facts about the foreclosure  
 7 and the distribution of funds.<sup>3</sup> In short, the court rejected Mr. Poorsina’s argument that the Big  
 8 Bear loan was fraudulent (based on Mr. Poorsina’s allegedly forged signature), granted summary  
 9 judgment to Mr. Neustadt for his claim based on Mr. Poorsina’s loan from Big Bear, and  
 10 distributed to Mr. Neustadt his share of the proceeds from the foreclosure sale.<sup>4</sup>

11 In this case, Mr. Poorsina sued Mr. Neustadt and Ms. Mosk, claiming fraud and a UCL  
 12 violation on the grounds that Mr. Poorsina’s signature was robo-signed or copied on the loan note,  
 13 the copies in the interpleader action had mistakes (such as the effective date), and the loan was  
 14 part of a scheme to defraud Mr. Poorsina (including through the representations in the interpleader  
 15 action).<sup>5</sup> To support his fraud claim, Mr. Poorsina alleged that “Neustadt and Mosk each  
 16 authorized Balloon Rider Note, made misrepresentation[s,] and engaged in a conspiracy to conceal  
 17 and deceive,” causing damages to Mr. Poorsina.<sup>6</sup> To support his UCL claim, Mr. Poorsina alleged  
 18 that he lost money because “of Defendants’ conduct filing [a] fraudulent motion for summ[a]ry  
 19 judgment into the surplus proceeds interpleader.”<sup>7</sup>

20 Mr. Neustadt moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6)  
 21 as (1) insufficiently plead under the requirements of Rule 8, (2) time-barred under the statute of  
 22 limitations, (3) barred by litigation privilege, and (4) barred by the doctrine of claim and issue

24 <sup>2</sup> Compl. – ECF No. 1 at 1, 3 (¶¶ 2–3, 9, 19).

25 <sup>3</sup> *In re: 1563 28th Ave.*, No. 19-cv-01385-LB Orders – ECF Nos. 167, 183, 190, & 204. This order  
 incorporates the facts and analysis in the earlier orders by this reference.

26 <sup>4</sup> *Id.*, Orders – ECF Nos. 167 at 14 & 183 at 6.

27 <sup>5</sup> Compl. – ECF No. 1 at 5–9 (¶¶ 10–14).

28 <sup>6</sup> *Id.* at 9 (¶¶ 17–18).

<sup>7</sup> *Id.* (¶ 19).

1 preclusion.<sup>8</sup> This motion was supplemented by Mr. Neustadt's Request for Judicial Notice which  
2 included parts of the record of the underlying litigation. Ms. Mosk joined the motion for the  
3 reasons Mr. Neustadt advanced and added that there was no federal-question or diversity  
4 jurisdiction.<sup>9</sup> Mr. Neustadt then conceded that the court could decline to exercise supplemental  
5 jurisdiction over this case but asked that the court exercise jurisdiction because a failure to do so  
6 "would only serve to increase unnecessarily the costs and expenses of litigation, as well as  
7 increase the expenditure of judicial resources."<sup>10</sup>

8 The parties consented to magistrate-judge jurisdiction under 28 U.S.C. § 636.<sup>11</sup>

## 10 STANDARD

### 11 1. Rule 12(b)(1)

12 A complaint must contain a "short and plain statement of the claim showing that the pleader is  
13 entitled to relief" to give the defendant "fair notice" of what the claims are and the grounds upon  
14 which they rest. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A  
15 complaint does not need detailed factual allegations, but "a plaintiff's obligation to provide the  
16 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic  
17 recitation of the elements of a cause of action will not do. Factual allegations must be enough to  
18 raise a right to relief above the speculative level[.]" *Twombly*, 550 U.S. at 555 (cleaned up).

19 A Rule 12(b)(1) motion may either attack the sufficiency of the complaint to establish federal  
20 jurisdiction (a facial challenge) or allege a lack of jurisdiction that exists despite the formal  
21 sufficiency of the complaint (a factual challenge). *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.  
22 2000); *Thornhill Publ'g Co., Inc. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979);  
23 *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). This is a facial attack. A facial attack

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25 <sup>8</sup> Mot. to Dismiss – ECF No. 14.

26 <sup>9</sup> Mot. to Dismiss and Joinder – ECF No. 23.

27 <sup>10</sup> Statement – ECF 31 at 2–3. Ms. Mosk did not file her optional reply to her motion and thus did not respond to this argument.

28 <sup>11</sup> Consents – ECF Nos. 9, 11, 18, 19.

1 asserts lack of federal jurisdiction based on the complaint alone, and the court must “accept all  
2 allegations of fact in the complaint as true and construe them in the light most favorable to the  
3 plaintiffs.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

4 Dismissal of a complaint without leave to amend should only be granted where the  
5 jurisdictional defect cannot be cured by amendment. *Eminence Cap., LLC v. Aspeon, Inc.*, 316  
6 F.3d 1048, 1052 (9th Cir. 2003).

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8 **2. Rule 12(b)(6)**

9 To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual  
10 allegations, which when accepted as true, “state a claim to relief that is plausible on its face.”  
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has  
12 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
13 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility  
14 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a  
15 defendant has acted unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 556). “Where a complaint pleads  
16 facts that are merely consistent with a defendant’s liability, it stops short of the line between  
17 possibility and plausibility of ‘entitlement to relief.’” *Id.* (cleaned up).

18 A defendant may raise the affirmative defense of res judicata in a Rule 12(b)(6) motion to  
19 dismiss. *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984).

20 Federal courts must construe pro se complaints liberally. *Hughes v. Rowe*, 449 U.S. 5, 9  
21 (1980); *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005). A pro se plaintiff need only  
22 provide the defendants with fair notice of his claims and the grounds upon which they rest.  
23 *Hearns*, 413 F.3d at 1043. He need not plead specific legal theories so long as sufficient factual  
24 averments show that he may be entitled to some relief. *Id.* at 1041.

25 If a court dismisses a complaint, it should give leave to amend “unless the pleading could not  
26 possibly be cured by the allegation of other facts.” *United States v. United Healthcare Ins. Co.*,  
27 848 F.3d 1161, 1182 (9th Cir. 2016) (cleaned up).

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**ANALYSIS**

2 There is no federal-question or diversity jurisdiction: Mr. Poorsina sues the defendants only for  
3 violations of state law, and the parties all reside in California. 28 U.S.C. §§ 1331 & 1332(a). To the  
4 extent that the court can assert ancillary or supplemental jurisdiction to consider Mr. Poorsina's  
5 collateral attack on the interpleader action, res judicata bars that attack: in the interpleader action,  
6 the court rejected Mr. Poorsina's challenges to the loan note, including the alleged forgery of his  
7 signature. *Cooter & Gell v. Hartmarx Corp.* 496 U.S. 384, 395 (1990) (collateral issue of  
8 sanctions); *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 968 (9th Cir. 2014) (ancillary  
9 jurisdiction to resolve attorney's fees dispute); *Town of N. Bonneville v. Callaway*, 10 F.3d 1505,  
10 1508 (9th Cir. 1993) (standards for res judicata). (There are other grounds to dismiss the complaint:  
11 for example, Mr. Poorsina does not plead fraud with the requisite particularity. Fed. R. Civ. P. 9(b).  
12 But the court does not reach the issues given the jurisdictional and res-judicata bars.)

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**CONCLUSION**

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The court grants the motion to dismiss with prejudice. This disposes of ECF Nos. 13 & 23.

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**IT IS SO ORDERED.**

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Dated: September 22, 2021

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19 LAUREL BEELER  
United States Magistrate Judge